IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3435 OF 2005

IN

SUIT NO.2428 OF 2000

...

Varun Shipping Company Ltd. ...Plaintiff

v/s.

Mr.Amar A. Korde and ors. ...Defendants

...

Mr.Rahul Chitnis i/b P.J.Ranga for the Plaintiff.

Mr.Dipesh Suroya i/b L.J.Law for Defendants Nos. 1 & 2.

Ms.Nipa Pandya i/b Mahesh Menon & Co. for Defendant No.3 in support.

...

CORAM: D.K.DESHMUKH, J.

DATED: 21ST JUNE, 2007

P.C.:

1. This Notice of Motion is taken out by the Defendant No.3. The Plaintiff has filed the suit for money decree against the Defendants Nos.1 & 2. It appears that they were joint owners of the flat. The court appointed a receiver on that flat. It is the case of the Defendant No.3 that that flat was mortgaged to Defendant No.3. The court made an order for sale of the flat by the Receiver. Defendant No.3 agreed to the sale of the flat and in fact co.operated in sale of the flat. Now the flat has been sold and the sale-proceeds have been received. Now, the Defendant No.3-bank has taken out this Notice of Motion for withdrawal of entire amount of sale-proceeds. Because it is the case of the Defendant No.3 that the amount in excess of the sale-proceeds is recoverable by the Defendant No.3-bank from the Defendants Nos. 1 & 2.

2. The Notice of Motion is opposed by the Plaintiff. Admittedly there is no decree secured by the Defendant No.3 against the Defendants Nos. 1 & 2.

Unless there is a decree determining the claim of the Defendant No.3 against Defendants Nos. 1 & 2 passed by the competent court, in my opinion, the Defendant No.3 cannot be given the sale-proceeds. Present suit is pending and therefore during the pendency of the suit by interim order the money which was collected by sale of the property belonging to the Defendants Nos. 1 & 2 cannot be handed over to the Defendant No.3 unconditionally.

3. Taking overall view of the matter, therefore, in my opinion, following order would meed ends of justice.

(i) In case the Defendant No.3, with due intimation to the Plaintiff and the Defendants Nos. 1 & 2, within the period of four weeks from today files an undertaking that in case the Defendant No.3 is permitted to withdraw the amount of sale-proceeds of the flat, the Defendant No.3 undertakes to bring back the amount if so directed by this court on such terms and conditions as may be directed by this court with further undertaking that in that event the rate of interest shall not be less than 12% p.a.

. The Court Receiver informs that the amount has been forwarded to the Prothonotary & Sr.Master in the month of October, 2006.

(ii) In case such an undertaking is filed by the Defendant No.3 within four weeks, the Prothonotary & Sr.Master shall permit the Defendant No.3 to withdraw the entire amount of sale-proceeds with accruals if any.

(iii) In case such an undertaking is not filed, this Notice of Motion shall be treated as dismissed. In that event the Prothonotary & Sr.Master shall invest the amount of sale-proceeds in a nationalised bank for appropriate period during the pendency of the suit, if it is not already done by the Prothonotary & Sr.Master.

(iv) Motion disposed of.

...